

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**LUCILLE HALL,**

**Plaintiff,**

**v.**

**GENPAK, L.L.C.,**

**Defendant.**

**CIVIL ACTION NO.  
2:06 CV 946-MHT (WO)**

**DEFENDANT GENPAK'S MOTION TO DISMISS FOR  
FAILURE TO COMPLY WITH THE COURT'S ORDER REGARDING  
SIGNING A HIPAA RELEASE AND FOR FAILURE TO PROSECUTE**

Comes now Defendant Genpak, LLC. ("Genpak" or "Defendant"), pursuant to the Federal Rules of Civil Procedure 37 and 41(b), and moves this Honorable Court to dismiss Plaintiff's Complaint for failure to prosecute her case, including her recent failure to comply with the Court's Order directing her to execute HIPAA Compliant Medical Release.

1. At the scheduling conference held on August 28, 2007, counsel for Defendant requested that Plaintiff sign a HIPAA Medical Release. Plaintiff refused.

2. On September 5, 2007, Defendant filed a Motion to Compel Plaintiff to sign a HIPAA Medical Release. (Doc. 34) In its motion, Defendant explained that the HIPAA release is essential to Genpak's ability to acquire information both relevant and discoverable to this action. In particular, a HIPAA release is required for Defendant to acquire information regarding Plaintiff's medical and counseling treatment and her participation in certain programs. By asserting claims for damages based, in part, on alleged pain and suffering, emotional trauma, "having to find medical funding through the Gift of Life program," and for enrolling in the

COPE program, Plaintiff has necessarily put her mental and physical health, as well as her participation in these programs, at issue in this case.

3. On September 5, 2007, the Court entered an Order giving Plaintiff until September 13, 2007 to respond to the Motion to Compel. (Doc. 35). Plaintiff did not submit a response.

4. On September 24, 2007, the Court entered an order granting Defendant's Motion to Compel and directing Plaintiff to sign the HIPAA compliant medical release attached to the Motion and return it to the Defendant on or before October 4, 2007. (Doc. 36). Plaintiff failed to comply with this order.

5. Counsel for Defendant has called Plaintiff more than five (5) times since the Court ordered deadline (leaving two messages on an answering machine and one message with an individual) to discuss Plaintiff's failure to provide a signed HIPAA compliant medical release. Plaintiff has not returned any of these messages.

6. Throughout this litigation, Plaintiff has repeatedly failed to respond to discovery requests and communications from defense counsel. During the August 28, 2007 scheduling conference and at the Defendant's request, Magistrate Judge Walker reviewed the obligations of the parties with respect to responding to discovery requests and communications in this case.

7. Despite the repeated actions taken by Defendant to advance this litigation, the case has completely stalled (for a second time and less than three weeks before the deadline for Court ordered mediation) because of Plaintiff's complete disregard for her obligations in discovery and consistent refusal to communicate with defense counsel, much less take any meaningful step to push this litigation forward. (See Docs. 23, 24 and 27). Defendant has been

significantly prejudiced by Plaintiff's failure to prosecute her case, including her most recent failure to comply with the Court's Order regarding the HIPAA release.

WHEREFORE, PREMISES CONSIDERED, Genpak respectfully requests that this Honorable Court exercise its inherent authority to dismiss this action with prejudice for failure to comply with the Court's September 24, 2007 Order and lack of prosecution.

Respectfully submitted,

/s/ Robin A. Adams

David M. Smith

Robin A. Adams

Attorneys for Defendant Genpak, L.L.C.

OF COUNSEL:

MAYNARD, COOPER & GALE, P.C.

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Birmingham, Alabama 35203

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of October, 2007, a copy of the foregoing was served via certified first-class mail, postage prepaid, to:

Ms. Lucille Hall

6124 Fuller Rd

Montgomery Al 36110

/s/ Robin A. Adams

OF COUNSEL